



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0915]

RIN 1625-AA00

Safety Zones for Parallel Thimble Shoal Tunnel Project on the Chesapeake Bay

Bridge Tunnel; Chesapeake Bay, VA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones for certain waters of the Chesapeake Bay. This action is necessary to provide for the safety of life on these navigable waters near the Chesapeake Bay Bridge Tunnel (CBBT), linking Southeastern Virginia to the Eastern Shore, during an already ongoing construction project on the CBBT. This regulation prohibits persons and vessels from operating within 500 feet of the construction area unless authorized by the Captain of the Port (COTP) Sector Virginia or a designated representative.

DATES: This rule is effective from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], through January 31, 2027.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0915 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Sector Virginia, Waterways Management Division, U.S. Coast Guard, Telephone: (757) 668-5581; Email: virginiawaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CBBT	Chesapeake Bay Bridge Tunnel
CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Virginia
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

In December, 2021, the COTP was notified by project management for the Parallel Thimble Shoals Tunnel Project that construction work in vicinity of the CBBT's southern two islands, South Thimble Island and North Thimble Island, creates hazards to the maritime public and recommended the establishment of safety zones. Hazards include the operation of heavy machinery and loads suspended by cranes over the waters surrounding the islands and attached structures. Specifically, safety concerns were raised that involved kayakers and vessels fishing in the vicinity of the construction site despite posted signs indicating not to approach the site within 500 feet. The COTP has determined that potential hazards associated with the construction equipment used in this project creates a safety concern for those transiting within 500 feet of the project site. This construction project has been ongoing for 4 years, workers are present at all hours and the work is projected to continue for the next 5 years. In response, on April 8, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zones for Parallel Thimble Shoal Tunnel Project on the Chesapeake Bay Bridge Tunnel; Chesapeake Bay, VA” (87 FR 20796). There we stated why we issued the NPRM, and

invited comments on our proposed regulatory action related to the bridge construction.

During the comment period that ended May 23, 2022, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Virginia (COTP) has determined that potential hazards associated with the bridge tunnel construction project will be a safety concern for anyone within a 500-feet in all direction from the edge of both South Thimble Island and North Thimble Island. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone at all times while construction equipment is present.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 8, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes two temporary safety zones extending 500 feet in all directions from the edge of both South Thimble Island and North Thimble Island. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant

regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on its minimal impact to the local economy, as any fishery needing to use these waters can be accommodated by the two other man-made islands approximately 5 miles to the north and the attached 15 miles of bridge trestle which are not covered with construction equipment, and therefore will not be covered by these safety zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted

for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones to protect the public from hazards created by ongoing construction work. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS

AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T05-0915 to read as follows:

§ 165.T05-0915 Safety Zones; Chesapeake Bay Bridge Tunnel, Chesapeake Bay Entrance, VA.

- (a) *Location.* The following areas are safety zones:

- (1) Any waters located within 500 feet in all directions from the edge of South Thimble Island. South Thimble Island is located approximately 3.3 miles north of the shores of Virginia Beach on Highway 13, also known as the Chesapeake Bay Bridge Tunnel (CBBT).

- (2) Any waters located within 500 feet in all directions from the edge of North Thimble Island. North Thimble Island is located approximately 4.5 miles north of Virginia Beach on Highway 13.

- (b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Virginia (COTP) in the enforcement of the safety zones. The term also includes an employee or contractor of Chesapeake Tunnel Joint Venture (CTJV) for the sole purpose of designating and establishing safe transit corridors, to permit passage into or through the safety zones listed in paragraph (a) of this section, or to notify vessels and individuals that they have entered a safety zone and are required to depart immediately.

- (c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, no vessel or person may enter or remain in any safety zone described in

paragraph (a) of this section unless authorized by the COTP, or designated representative. If a vessel or person is notified by the COTP, or designated representative, that they have entered one of these safety zones without permission, they are required to immediately depart in a safe manner following the directions given.

(2) Mariners requesting to transit any of these safety zones must first contact the CTJV designated representatives, CTJV Marine General Superintendant by phone at 361-244-8852, CTJV Safety Director at 702-415-8600, or CTJV Construction Manager at 757-782-7741. CTJV will be monitoring VHF-FM channels 13 and 16 while work is ongoing. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, or designated representative, to the mariner regarding the conditions of entry to and exit from any location within the fixed safety zones.

(d) *Enforcement.* The Sector Virginia COTP may enforce the regulations in this section and may be assisted by any Federal, state, county, or municipal law enforcement agency.

(e) *Enforcement period.* This section will be enforced until January 31, 2027, unless cancelled sooner by the COTP.

Dated: August 19, 2022.

Jennifer A. Stockwell,
Captain, U.S. Coast Guard,
Captain of the Port Virginia.